IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9029 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INTRACIL PHANRMACEUTICALS LTD - Petitioner(s)

Versus

DILIPBHAI AMBASHANKAR JOSHI - Respondent(s)

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Appearance :

MR KM PATEL for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 20/07/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 21st January, 1998 passed by the Labour Court, Nadiad in Reference [L.C.N.] 566/83 whereby the Labour Court has awarded 50% back wages.

2. The short facts of the case are that the respondent was working as a Manufacturing In charge Chemist with the petitioner Company. After a short period of service of about seven months, there were complaints against the behaviour and conduct of the respondent with the female employees working with the petitioner Company. Since the service record of the respondent was not good, the services of the respondent was terminated w.e.f. 18th May, 1982.

2.1. Being aggrieved by the said order, the respondent raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. Mr. Patel learned advocate for the petitioner has contended that the Labour Court has committed an error in awarding 50% back wages *inasmuch* as there were serious allegations against the respondent and that a criminal case was also pending against him in the Court at Baroda for the offence of theft of material of Alembic Chemicals. Mr. Patel has further contended that the

respondent is gainfully employed elsewhere and is earning approximately Rs. 3500=00 per month. Therefore grant of back wages was not justified.

4. I have heard the learned counsel for the parties. Having perused the materials produced on record, it transpires that looking to the serious allegations as well as past record of the respondent, the Labour Court ought not to have granted back wages. Even other wise since the respondent is gainfully employed elsewhere, grant of back wages was not justified. Moreover in view of the principle laid down by the Apex Court in the case of **General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137,** wherein it has been held that an order of payment of back wages should not be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Thus, the impugned award is required to be quashed and set aside.

5. In the result, the petition is allowed. The award dated 21st January, 1998 passed by the Labour Court, Nadiad in Reference [L.C.N.] 566/83 is quashed and set aside. Rule is made absolute to the aforesaid extent

with no order as to costs. It is clarified that the amount which has been withdrawn by the respondent pursuant to the order dated 28th April, 1999 shall not be recovered from the respondent.

[K.S. JHAVERI, J.]

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